

**Submission
No 282**

**INQUIRY INTO PLANNING PROCESS IN NEWCASTLE
AND THE BROADER HUNTER REGION**

Organisation: Hunter Transport for Business Development
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Partially Confidential

SUBMISSION TO LEGISLATIVE COUNCIL INQUIRY ON THE PLANNING PROCESS IN NEWCASTLE AND THE BROADER HUNTER REGION

BY HUNTER TRANSPORT FOR BUSINESS DEVELOPMENT [HTBD]

EXECUTIVE SUMMARY

The Hunter Development Corporation[HDC] has in its Mission Statement an objective to coordinate the redevelopment of surplus rail land and a project philosophy to make that project self funding in the medium to long term. Accordingly it was wrong of the government to appoint in 2003, three directors of HDC to the Lower Hunter Transport Working Group [LHTWG] to inquire into whether the rail line to Newcastle should be cut, as to do so would render the rail land surplus so that HDC could redevelop the rail land and sell it. The question as to whether to cut the line should have been given to consultants completely independent of HDC.

That original conflict of interest has continued to the present day with HDC having the major role in recommending to government whether rail should be cut and where alternatives to heavy rail vehicles should run. Paramount in all consideration has been a reluctance by the government to consider any alternative which did not leave the rail corridor free.

With government releasing information suggesting some development on the rail line and the Premier's refusing in parliament on 21st October 2014 to rule out development on the rail corridor it seems that the real reason to cut the line is to facilitate development possibly high rise because the rail corridor is the only land in the inner city not undermined

A problem with the LHTBD report was that it made many false assumptions many errors and despite these errors being severely criticised by eminent independent economists, subsequent consultants accepted the findings of the LHTWG as the starting point for their reports. As a result the HDC report of 'May 2009 " Newcastle City Centre Renewal Report " was flawed due to the base information and assumptions being flawed and also due to actions such as falsely claiming the City Campus as a benefit in a cost benefit analysis, arising from rail line removal, when the University had said that it did not have a position on whether the rail line should be removed.

Had the cost/benefit analysis been done on an authentic basis the decision would have been to retain the rail line.

Despite further serious criticism from independent experts HDC continued to regard the HDC Report as justifying cutting the rail line.

In the in the most recent exercise involving the rail, planning the planning processes have also been fraught with conflicts of interest and breaches of government codes of conduct.. A government agency Urban Growth purchased for \$20 million from GPT a private developer, a two thirds share in Mall property for which GPT had paid \$100 million. The government promulgated a spot rezoning which substantially increased allowable building heights for that specific land increasing the value significantly to the benefit of GPT AND UG. The government is both regulator and the developer,.

Both GPT and UG had made clear that their Mall development could not proceed unless the rail was cut.

Although the government had agreed in July 2013 that light rail would run on the existing corridor, the then Lord Mayor Jeff McCloy embarked on a strong campaign for light rail to run along Hunter and Scott streets, The Property Council of which the McCloy group is a core member as is GPT, UG, HDC commissioned a report as to where the light rail should run.

The report which again has been severely criticised, concluded that light rail should run down Hunter Street. The government moved 180 degrees from its original decision to keep light rail in the corridor and followed the Property Council decision. The outcome as it stands is that all the parties with a vested interest in the rail being cut have achieved their objectives.

Present rail passengers will have their journey times increased to such an extent they will abandon public transport and drive cars adding to road traffic gridlock. Hunter Street businesses will be so affected by light rail construction they will go out of business.

This disastrous outcome can only be explained by concluding that the significant conflicts of interest of those involved in the decision making planning processes have impacted seriously on that process.

We request the inquiry to find--

1. That the decision of the government to rezone the Mall land for high rise set aside and the height limits under the previous LEP be reinstated.
2. That the planning processes and reports purporting to justify the decisions for rail removal and light rail along Hunter and Scott St were flawed, that breaches of government acts and codes of conduct were significant and that conflict of interest was so prevalent that the Inquiry recommends that the government must set aside its decision to cut the rail and run trams along Hunter and Scott Streets.

3.

SUBMISSION

1 WHO WE ARE [NOT FOR PROFIT]

I am Convenor of Hunter Transport for Business Development[HTBD] a not for profit organisation of professionals, concerned to do what we can to ensure that Newcastle and the Hunter have the best public transport system to meet needs for the next 50 years.

In particular we have made many submissions to the present and previous government, concerning retention of the existing rail infrastructure in Newcastle and introducing light rail on the existing tracks in the existing rail corridor from Hamilton to Newcastle Station[ANNEXURE TWO] This would enable "connectivity" to be improved between the Inner City and the Harbour, which is the oft quoted mantra of those seeking removal of the rail in inner city Newcastle. This proposal would cost about \$210 million, less than half the estimated cost of the government proposal of \$460 million

In addition we have submitted a proposal to extend the light rail network to Callaghan Campus, John Hunter Hospital, Jesmond and Wallsend by way of extension to the above Newcastle proposal.
[ANNEXURE ONE]

DATE	DOCUMENT	SUBJECT MATTER	COST Of HTBD proposal	COST OF GOVERNMENT PROPOSAL	ACCEPTANCE BY GOVERNMENT
23/2/2009	Annexure 1 Introduction to Lower Hunter Tram Train Network	Extension of light rail network to Callaghan campus, John Hunter hospital and suburbs. Light rail will remain in existing corridor supplemented by Express bus system to other major locations.	\$160 million	\$460 Million Just for 4 trams in Hunter street and Wickham terminus	Alternatives not considered at all
2013	Annexure 2 Rationale for a Hamilton Transit Interchange	Light rail in existing corridor from Hamilton to Newcastle	\$210 Million	\$460 Million Just for 4 trams in Hunter street and Wickham terminus	Initially accepted by Government. Later reversed in favour of trams in Hunter Street

Our proposal for the extended light rail network including the Newcastle rail corridor segment and an express bus service to major destinations in Newcastle would cost about \$160 million [2009 prices][[]]

[ANNEXURE ONE]]much less than half the cost of the government proposal , estimated at \$460 million..

We emphasise that we do not stand to gain financially from whether the rail is removed or stays or whether light rail runs on the existing corridor or along Hunter Street and Scott streets.

Our submissions have been based on fact, utilization of expert advice and have been fully costed and in the public interest.

2 ANNOUNCEMENT THAT LIGHT RAIL WILL RUN DOWN RAIL CORRIDOR TO NEWCASTLE STATION

In July 2013 the government announced that it was intended that light rail would run on the existing tracks along the existing rail corridor to the city centre.[See Review of Environmental Factors third last paragraph on Page 21 .We had a mild celebration as it was our proposal to locate the interchange at Hamilton and have light rail vehicles run on the existing tracks and existing corridor to Newcastle Station

3 CAMPAIGN FOR TRAMS IN HUNTER STREET

However the Newcastle Herald reported soon after that the Treasurer Mr Baird seemed taken aback when the then Lord Mayor Jeff McCloy stated that the light rail should run along Hunter Street.

From that time the Lord Mayor embarked on an intensive media campaign promoting the Hunter street tram proposal.

The Property Council of Australia Hunter Chapter[PCA]appointed consultants to investigate the Preferred route for light rail.

The consultants recommended inter alia that light rail should run along Hunter and Scott streets and not utilise the entire rail corridor to Newcastle Station.

Hunter Business Chamber also strongly supported that proposal.

The government then put the light rail route issue to the public with 3 options all involving the light rail vehicles leaving the rail corridor at some point and running along Hunter and Scott Streets.

The most cost effective option , light rail on the existing tracks from to Newcastle Station was not offered to the public although this was the option preferred by the government in July 2013

4.LINK WITH RELEVANT ACT GOVERNMENT CODE OF CONDUCT/PRACTICE

The Government Sector Employment Act 2013 Part 2 Ethical Framework for the government sector lists core values for the government Sector. . Under Integrity

[a' Consider people equally without prejudice or favour

[b] Act professionally with honesty, consistency and impartiality

[c]Place the public interest over personal interest.

We submit that government by not offering the option which the government itself had previously accepted has not considered the people of Newcastle and the Hunter equally, without prejudice and has favoured a particular group, developers and the HDC, GPT, Urban Growth and the Property Council of Australia all of whom have a vested and expressed interest in removing the rail line from the existing corridor. Conflict of interest will be analysed later.

Likewise that action has not complied with the value of impartiality and has not placed the public interest over personal interest.

The public interest lay in having the opportunity to choose an option which was much more cost effective and presented fewer problems than the options offered.

NSW government departments and agencies have their own codes of conduct requiring employees and others to act with integrity, impartiality honesty and avoid conflicts of interest.

- See for example
- Code of Conduct and Ethics 2011 for Planning NSW and related entities
- Transport for NSW Code of Conduct and Statement of Business Ethics

5 DECISION DECEMBER 2013 THAT LIGHT RAIL WOULD RUN ALONG HUNTER AND SCOTT

The government announced in December 2013 that light rail would run along Hunter and Scott Streets from Worth Place and not on the rail corridor

We consider it vital to explore the reasoning/rationale just why the government turned 180 degrees from its original decision and chose an option costing more than twice as much as the full corridor option, wasting the capital already invested in the existing line, to in effect duplicate the existing rail line in Hunter Street which in most places is 20 to 30 metres from the rail corridor and right next to Scott Street.

6 LINK WITH RELEVANT ACT GOVERNMENT CODE OF CONDUCT/PRACTICE

Public Interest Disclosures Act protects public officials for making a disclosure of "serious and substantial waste [Audit Office Maladministration [Ombudsman] and corrupt conduct [CAC [

WASTE

Audit office description of "serious and substantial waste" refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.

The decision to run trams along Hunter Street clearly constitutes serious and substantial waste" compared to the alternative of utilising the rail corridor which utilises existing rails and signalling. The existing infrastructure is only part way through its economic life and at least \$50 million was spent recently on ballasting and new tracks and an additional \$20 million on reducing time that gates remain open.

7 MALADMINISTRATION [OMBUDSMAN'S ACT

- 'Maladministration' is defined in the Ombudsman's Act as conduct that involves action or inaction of a serious nature that is
- contrary to law
- unreasonable, unjust or oppressive or improperly discriminatory
- based wholly or partly on improper motives

We consider maladministration has occurred because the motivation for abandoning the existing rail corridor is to enable development in the rail corridor . A clear pattern can be seen from the Mission Statement of Hunter Development Corporation ,[HDC] ANNEXURE FIVE to co -ordinate the redevelopment of surplus rail land ,and the public statements of GPT and its business partner GPT that their development in the Mall will not proceed unless the rail is removed. This motivation is confirmed by the Premier's announcement in Parliament on 21st October 2014 , that he cannot guarantee there will not be development in the rail corridor.

This is despite the government misleading the public for many years that the rail corridor will be retained for transport purposes and variously be green space and fountains. This is unjust oppressive and improperly discriminatory to train travellers , who will be seriously disadvantaged by rail removal and those people who were expecting green space. And would have objected to what is now proposed.

This amounts to misleading and deceptive conduct under the Trade Practices Act .People could have been led into error by the government's statements to believe that there would be no development on the rail corridor and made decisions based on that misleading and deceptive conduct.

The failure to consider alternatives such as extension of the light rail network to Callaghan Campus and the suburbs [ANNEXURE ONE] and light rail along the existing rail corridor ANNEXURE TWO which was an alternative previously accepted by the government and discarded without giving reasons would be a breach of treasury guidelines for government projects..

8 LINK TO BREACHES OF RELEVANT ACTS GOVERNMENT CODE OF CONDUCT/PRACTICE

- Failure to consider alternatives and base case [treasury guidelines]
- Lack of impartiality [Public service code of ethics] See above

9. DETRIMENTAL OUTCOMES OF THE GOVERNMENT' DECISION TO IMMOBILISE RAIL IN EXISTING CORRIDOR AND RUN TRAMS DOWN HUNTER AND SCOTT STREETS NEWCASTLE

Our very serious concern is that the government appears to have chosen a course of action which cannot be substantiated on economic , transport or urban renewal grounds, which is going to cost the taxpayer much more than twice as much as our proposal and which will so increase journey times for rail passengers from Maitland and Lake Macquarie that they will abandon rail transport and drive cars adding substantially to road traffic gridlock already predicted by 2016[Bitsios report]

The proposed installation of trams in Hunter and Scott streets will so disrupt businesses that many of them will go out of business during the construction period..

Current rail passengers will not accept transferring to buses for at least two years during construction of the Wickham terminus and will try to drive cars or not come to Newcastle at all.

The Minister for Transport stated in Parliament on 21st November 2013 See Hansard 21 st November 2013, in debate on rail following Save Our Rail' s petition that the decision was not about transport but was about urban renewal.

However the Newcastle Urban Renewal Strategy[NURS]document says [appendices 1 to 5] that the document was prepared prior to the government's decision on transport services and was therefore written to enable the successful implementation of all possible transport arrangements. .

Accordingly there is nothing in the NURS documents to support any inference that the rail had to be removed to allow proposed urban renewal to take place..

I noted at a community group's session this year run by the government that it was significant that on the maps provided there was no urban renewal project proposed in the NURS, that could not proceed with the rail intact nor would any proposal put forward by the community group participants .

an officer of Transport for New South Wales at the final information session on the Wickham Interchange and the proposal to run trams along Hunter and S cott Streets. held at the Wickham / Croatia Bowling Club ,said that Transport NSW had wanted light rail to run on the existing corridor but the Department of Planning had insisted on it running along Hunter and Scott streets.

We asked to speak to officers for Planning but there were none present.

The Department of Planning appears to be responsible for recommending that light rail run on Hunter/Scott Streets rather than on the existing corridor as preferred by Transport for NSW.

a Transport for NSW engineer said at a previous information session when asked why it was decided to run light rail along Hunter and Scott streets, he said that it was because that was what Mr McCloy wanted. He, said he personally preferred that light rail run on the existing corridor .

10. HOW DID THIS DETRIMENTAL SITUATION COME ABOUT

We are not suggesting that money has changed hands to arrive at the present outcome , however we consider that there are some blatant conflicts of interest between organisations involved in the decision making process, which could lead reasonable people to perceive that undue influence in the nature of each party achieving its objectives could have taken place in that sort of environment and that the disturbing outcome can only be explained by those conflicts of interest impacting on the process.

This flawed planning process can lead to inequality, wasted resources and inefficient use of public money all of which will be present significantly if the government proceeds with its present proposal.

Some of the conflicts of interest are by those parties which had a vested interest in the rail line being removed or immobilised are;-

- HDC whose mission it is to coordinate the redevelopment of surplus rail land and an objective to make that project self funding.[HDC MISSION STATEMENT ANNEXURE FIVE
- UG and GPT business partners both made public assertions that their joint Mall development would not proceed unless the rail was removed or immobilised.
- HDC and UG played leading roles on the Steering Committee which recommended precisely what GPT and UG stipulated .
- Senior officers of HDC, were appointed to the UG Board and later moved to senior positions with UG. became the project manager of the Steering Committee.

Hunter Business Chamber[HBC] wanted the rail to go

- Bob Hawes, General Manager of HDC was also Chairman of the Infrastructure Committee of HBC
- UG ,GPT and the government are now in a position to benefit from the sale of the Mall land, the value of which will be considerably enhanced by increased height limits achieved by a SEPP promulgated by the Government which is both regulator and developer..
- The Property Council commissioned consultants to prepare a report on the preferred route of the light rail.
- Property Council has reference on web site to its success in lobbying to achieve light rail down Hunter Street saying this shows the value of core membership. Core members include UG, HDC, the McCloy Group, GPT each of which has an interest in having the rail removed and /or trams running down Hunter Street. [SEE ANNEXURE SIX PROPERTY COUNCIL ADVERTISEMENT

The recent refusal by the government to release consultants reports it commissioned as to the best place for a new transport interchange, alignment of the light rail routes, a business case, benefit cost studies, detailed design of the interchange and detailed advice on the light rail system on the grounds of " commercial sensitivity" and "cabinet in confidence', demonstrates that those reports probably do not support the government's decision to remove the rail or would not withstand a modicum of independent scrutiny. Otherwise it could be expected that the government would trumpet the reports from the rooftops.

11 LINK WITH ACTS AND GOVERNMENT CODES OF CONDUCT

The above refusals conflict with the requirement in part 2 of the Government Sector Employment Act Accountability

[c] to provide transparency to enable public scrutiny

Concern is heightened because when the previous government published reports supposedly supporting rail removal, expert commentators Professor Howard Dick, economist [Newcastle], Professor Emeritus Warren Pengilly [Newcastle] a professor of law who is also a qualified accountant, Professor Graham Currie [Monash] economist and Dr Bruce McFarling, a professional economist whose PhD is in transport and development economics and visiting professor at Beijing University, were able to demolish the reports on the basis of false assumptions and incorrect methodology and use of incorrect data.

Dr McFarling has prepared a report [ANNEXURE] which demonstrates how the errors and false assumptions in the LHTWG report have been perpetuated by other consultants whose work purports to support the Newcastle City Centre Report of May 2009 which is accordingly flawed.

BACKGROUND

The continuing pattern of conduct to suit the interests of those organisations involved in the decision making process who wanted rail to be removed was evident from 2003.

- The former Minister for Transport the Hon Michael Costa commissioned on 11th April 2003, an enquiry into various Newcastle transport issues including whether the rail line from Broadmeadow to Newcastle should be cut. The enquiry was conducted by a body known as the Lower Hunter Transport Working Group [LHTWG]. This Group consisted of a Chairman, Dr Bill Dunbar [Executive Director of the Infrastructure Co-ordination Unit, Department of Infrastructure and Planning and three Newcastle citizens,

12 LINK WITH ACTS AND GOVERNMENT CODES OF CONDUCT

Stacking of various committees and advisory panels by people with declared interests in terminating the rail is inconsistent with the principle of Integrity in Part 2 of the Ethical framework Government Sector Employment Act 2013

[a] with impartiality

[d[Place the public interest over personal interest

Note this criticism is directed to the government at the time who should never have appointed 3 Directors of HDC to recommend whether rail should be cut when HDC 'S mission is to co-ordinate redevelopment of surplus rail land

- The fundamental issue is that the three Newcastle citizen members of the LHTWG, were also Board Members of the Honeysuckle Development Corporation, now known as the Hunter Development Corporation [HDC] The Mission Statement of HDC is to co ordinate the redevelopment of surplus rail and port related land and the Project Philosophy to ensure that in the medium to long term the project would become self funding. HDC would be the chief beneficiary of a decision to cut the Broadmeadow -- Newcastle rail line because, if such a decision were made, the rail land would become " surplus government railway land" and thus available for development and /or sale by HDC.

Accordingly the three Newcastle Citizen Members of LHTWG had a conflict of interest in being directors of HDC which had a vested interest in having the rail removed. This was never publicly

disclosed . We assert in any event that the citizen members of LHTWG were not able impartially to evaluate the issues and that the the LHTWG enquiry is inherently flawed by virtue of the composition of its members..

- It was contrary to good governance for the government to appoint board members of HDC to investigate whether a rail line should be closed when a decision to close the line would benefit HDC which had an objective to sell surplus rail land and relied on the proceeds of the sale of land to continue in operation. The government should have appointed completely independent consultants to investigate such an issue. The outcome of the Inquiry was inevitable in the circumstances. A fait accompli a foregone conclusion which makes a mockery of the principle of impartiality..
- This flawed recommendation to close the line appears to have been accepted to the present day without any independent evaluation as all reports since the LHTWG reports have simply accepted the errors and false assumptions in that report. See report by Dr Bruce Mc Farling[ANNEXURE SEVEN
 - LHTWG was wrong in relation to many facts and conclusions. In particular it was wrong in saying the Newcastle line patronage was falling when it was increasing .
- LHTWG misled the public in relation to the processes it was adopting in relation to its inquiry, in that public submissions including mine were called for but clearly not taken into account Informed debate was called for but this was never intended.
- LHTWG misled the public in relation to the retention of a "dedicated public transport corridor". It recommended a retention of land given such a title but with no transport running on it .This was a semantic trick. This has been repeated in the current case where the government led people to believe that the rail land would be retained as a transport corridor with green space but the Premier announced in parliament on 22nd October 2014 that he could not guarantee that development would not occur on the rail corridor.
- LHTWG misled the public by saying that its recommendation to retain a dedicated transport corridor but with buses travelling on public roads was the best transport solution In fact this was the only solution, in that the Transport Administration Act prohibits the removal of railway lines without parliamentary authorisation and the Minister did not wish to submit the matter to parliament for such authorisation. The LHTWG recommendations were thus driven not by transport considerations but by political considerations. This is also reflected in the current situation where the government talks of retaining a dedicated public transport corridor but intends to have light rail run on Hunter and Scott streets.
- LHTWG made 3 reports and the Minister has acted on the information and conclusions in the reports , as justifying the closure of of the current 4 km rail line from Broadmeadow to Newcastle. The current proposal is to close the rail line from Wickham to Newcastle. Station.
- The government assigned HDC to implement that decision..
- The critical factor is that subsequent studies and reports commissioned by the government have simply assumed that the information and conclusions in the LHTWG reports were correct and unbiased. These subsequent studies and reports have also been discredited by the expert commentators referred

to above..The Property Council Report recommending the light rail go along Hunter and Scott streets is similarly flawed. The government has in effect relied on the Property Council report.

13 BREACH OF OBJECTIVES OF ACTS, PUBLIC SERVICE CODES OF ETHICS recommending

- We consider that the LHTWG evaluation breaches the Ombudsman's Act in that its conclusions were;--

contrary to law and fact,

based on improper motives

unreasonable,

in accordance with practices which are or may be unjust and unreasonable and

wrong

- The subsequent reports and decisions have perpetuated the errors in the LHTWG report and must not be relied upon.

The recent announcement by the Minister for Planning that some development will take place on the corridor and the announcement by the Premier on 21st October 2014 that he cannot guarantee that there will not be development on the corridor, helps confirm why the government has been reluctant to consider any proposal to fully utilise the rail corridor for light rail to Newcastle Station.

The objectives of the organizations with the conflicts of interest referred to below are reflected exactly in the outcomes announced by the government.

The outcomes are so clearly, not in the public interest and have such detrimental impacts, that the course of action could not have been recommended if acceptable procedures had been followed.

We request that the Inquiry investigate .

14 OUTLINE OF CONDUCT

Public Authorities involved

Hunter Development Corporation [HDC] --- A corporatised agency under the control of the Minister for Planning

Urban Growth-- UG -A corporatised agency under the control of the Minister for Planning

HDC and UG have played and are playing major roles in Task forces and steering committees advising the government on whether to immobilise or remove the existing rail in Newcastle build a transport interchange and determine if and where light rail vehicles should run in the Newcastle area.

15. THE GOVERNMENT'S RECOMMENDATION

Their recommendation to the government is, that rail services cease on the existing rail corridor between Worth Place and Newcastle Station and that light rail vehicles run along new rail lines in Hunter Street and Scott Street which are respectively 20 to 40 metres or so away from the existing rail corridor and in the case of Scott Street is literally over the fence from the corridor.

The cost of this recommendation is expected to be at least \$460 million to which must be added ,the cost of wasting the existing rail infrastructure which will be removed or immobilised and on which \$70 million was spent recently on upgrading. Our proposal to run light rail vehicles on the existing corridor to Newcastle Station would cost about\$ 210 million by way of contrast

16 .ANALYSIS OF CONFLICT OF INTEREST

The conflicts go back to 2003 and continue

- The LHTWG ,three of the members of which, were Directors of the government agency Hunter Development Corporation[HDC] recommended to the government that the rail line be removed in Newcastle and that HDC be given the task of implementing that recommendation. The government assigned the task to HDC.
- HDC 'S Mission Statement [ANNEXURE FIVE] is to coordinate the redevelopment of surplus railway land of and its Project Philosophy is to ensure that in the medium to long term. the project becomes self funding
- HDC relies for its continued survival on the proceeds of sale of land .
- That three of the Directors of HDC , which has as its objective the sale of surplus railway land and which depends on the proceeds of sale of such land for its continued existence, recommend that rail be removed in Newcastle, represents such a conflict of interest that it would be entirely inappropriate for HDC to be involved in the process of deciding whether the rail line should be cut.
- However that flawed decision that the rail should be removed has been accepted by subsequent consultants and HDC based on the flawed work of LHTWG
- The Hunter Business Chamber has been and is a vocal advocate of removal of the rail.
- The General Manager of HDC has been and still is the Chairman of the Infrastructure Committee of the Hunter Business Chamber. It is not clear whether that conflict of interest was disclosed and even if it had been , it is not clear that the conflict has been managed effectively, in that the outcome sought by Hunter Business Chamber, is the outcome recommended by the Steering Committee of which HDC has been a leading participant deciding to recommend where to cut the rail,
- UG is also a corporatised government agency, part of the business plan of which, is to parcel up government land and sell it to private developers.
- UG a corporatised government agency is in partnership on a Two thirds /one third basis with GPT , a private developer of land, predominantly located in the Mall area of the Inner City of Newcastle.

- We understand that GPT paid in the order of \$ 100 million for some of the parcels of land which were ultimately sold to UG for \$ 20 million. A reasonable question might be why was GPT willing to accept such a low price? Is there to be a pay back in the future? It would be important for the Inquiry to investigate the business arrangements and agreements between UG and GPT
- The government recently announced that the land the subject of the sale to UG and the land still owned by GPT has been spot rezoned to enable increase of building height levels from 24 metres to 90 metres thus increasing the value of the land.
- This means that the government, which is the regulator for zoning of land has arranged spot rezoning of land owned by Urban Growth a corporatised government agency and itself a developer and land owned by GPT.

UG and GPT are in a business arrangement and will be in a position to sell or develop the land at a price significantly increased by the government rezoning. This would be for the benefit of the government through its agency UG. GPT no doubt will be able to at least recoup the difference between the \$ 100 million GPT paid for its land and the \$ 20 million it received from UG and probably greatly exceed that figure. That may explain part of the pay back

- The fact that the Planning instruments on exhibition provided for high rise development much further west than the Mall which were acceptable to most people and this was changed to apply to the Mall without notice and only 16 days to object, is outrageous and suggests that the rezoning had little to do with good planning principles but was a device to benefit GPT UG and the government.
- GPT had been very vocal in proclaiming, when it owned all the said land, that it would not proceed with its development in the Mall unless the existing rail line was removed. This was in the nature of a threat initially because it was considered by some that the proposed GPT mall development would be beneficial to the city. This would have been helpful to the government in that the government was seeking support for its proposal to remove the rail.
- When the partnership between GPT and Urban Growth was announced, the then CEO of UG, reiterated GPT's previous requirement, that the Mall development would not proceed unless the rail line on the existing corridor was removed or immobilised.
- Accordingly the partners UG and GPT were both saying their development would not proceed unless the rail were removed. This suits the government because its major objective is to have the rail removed and the support of GPT and Urban Growth for that outcome would have been powerful.

17. SITUATION ANALYSIS

- HDC want the rail to go so the rail land becomes surplus and they can sell it and use the proceeds to continue in operation
- GPT and UG want the rail to go so they can proceed with their development and make a profit and in the case of GPT recoup their losses.
- Hunter Business Chamber wanted the rail to go.

- Bob Hawes General Manager of HDC was also Chairman of the Infrastructure Committee of Hunter Business Chamber and a former manager of the Hunter Chapter of Property Council NSW
- UG and HDC played a leading role in the Task Force which recommended precisely what GPT and later UG stipulated---- the removal or Immobilisation of the existing rail corridor.
- Senior officers of HDC were appointed to the Board of UG and later moved to senior positions with UG. became the project manager of and played major roles in the steering committee considering the removal or immobilisation of the rail line .
- UG and GPT and the government. are now in a position to benefit from the sale of the Mall land , the value of which will be considerably enhanced , if the height limit is increased to 90 metres from the existing 24 metres. This change to the height limit relating to the land owned by GPT and UG is to be made legal by a State Environmental Planning Policy[SEPP This also represents a significant conflict of interest which we request the Inquiry to investigate.
- In July 2013 the then Treasurer announced that light rail would run in the existing rail corridor .

Reference 3rd last paragraph on page 21 of Review of environmental factors

- HTBD were pleased because it was HTBD'S proposal to run light rail vehicles on the existing tracks to Newcastle Station.
- The Newcastle Herald reported that the Treasurer appeared surprised and taken aback, when the Lord Mayor of Newcastle, a developer, made it clear that he wanted light rail to run along Hunter Street.
- An engineering officer of Transport NSW when asked why the light rail was routed down Hunter and Scott streets said it was because that is what Jeff McCloy wanted .
- The Property Council and the Hunter Chamber, vigorous proponents of removing the rail, took up the cause. The Property Council commissioned consultants to advise on the route to be taken by the light rail . The Property Council recommended a route involving leaving the rail corridor running on Hunter and Scott streets
- HDC is a Core member of the Property Council as is Urban Growth. and the McCloy group. "Fix Our City" supported by Jeff McCloy which strongly advocated removal of the rail line, merged with the Newcastle Alliance, a group formerly financed by Newcastle Council. However it is not known what its sources of funding are now.
- The Property Council has a reference on its web site as to its success in lobbying to achieve the objectives of rail removal and light rail down Hunter and Scott Streets[.ANNEXURE SIX The reference says that this demonstrates the value of having Core members . UG , HDC, Newcastle City Council, the Mc Cloy Group and GPT are all Core members of the Property Council. Associate members of the Property Council include GHD , the lead consultant for the task Force. In the context of conflict of interest in a project such as this, the question arises as to just who the Property Council was lobbying? The Property Council report was addressed to Urban Growth so that was one core member of the Property Council lobbied by the Property Council .

- The Property Council in saying that its success in lobbying showed the value of having core members suggests that the Property Council could well have lobbied HDC.
- Urban Growth and HDC had leading roles in making recommendations to government and being lobbied by the Property Council could constitute a conflict of interest in the context of the rail issue. It is noted that the government appears to have largely accepted the Property Council's report on closure of the line and for trams to run along Hunter Street.
- The outcome is that the wishes of Hunter Business Chamber, the Property Council, Urban Growth, Jeff McCloy, and GPT have all been granted and the decision as it stands, is that the existing rail will be removed or immobilised and the light rail will run along Hunter and Scott Streets.
- The government put forward three proposed routes for light rail, none of which included our proposal for light rail vehicles on the existing rail corridor to Newcastle Station, although it is the most cost effective option by far. The community was not given an opportunity to comment on whether it would prefer our option. However two surveys conducted by the Newcastle Herald indicated 72.7% did not like the government proposed route and a very significant majority preferred the option which was the corridor dominant option.
- UG published a video on 15th March 2014 [Newcastle Herald which identified "opportunity sites" for development on the site of the existing rail line. A similar video was published by GPT 3 or 4 years ago with artist's impressions of buildings located on the existing rail line.
- The Minister for Transport was reported in local media recently, refusing to rule out development on the existing rail line.
- The Minister for Planning has now announced that there could be development on the rail land.
- The CEO of UG was reported as saying on ABC radio that substantial residential development could occur on the rail corridor.
- The Premier announced on 21st October 2014 in parliament Hansard that he could not guarantee that development would not take place on the rail corridor. This comes after many years of misleading the public that the rail corridor would remain in public hands and variously that it would be green space, lawns, fountains.
- This confirms the pattern that the decision to run trams down Hunter Street and Scott was motivated by the desire of the government to free up the rail corridor for development.
- It appears to us that the government agencies HDC and UG determined not to consider any proposal involving use of the rail corridor for light rail vehicles. The announcements about development on the rail line bear this out and the outcomes of the whole process reflect the conflicts of interest of HDC and UG and their relationships with HBC, GPT, the Property Council and the Newcastle Alliance.
- This means that the outcome of the whole flawed process will be, that the railway land will become surplus railway land and thus available for HDC to sell to private developers, the proceeds of which will go to HDC to fund its continued existence.

- GPT and the government agency UG will have achieved their stated objective of having the rail line removed or immobilised, enabling their joint project to redevelop the Mall to proceed. The government agency UG and GPT a private developer are able to sell the Mall land to private developers at a price inflated by UG a corporatised government agency having procured a spot rezoning to increase height limits from 24 metres to 90 metres.
- All of the above leads us to the inescapable conclusion that the whole process was flawed and the decision arrived at arose from very serious conflicts of interest, cannot be substantiated and must not be implemented.
- We submit that the government agencies involved so prominently in the recommendation, had serious conflicts of interest and that there was scope for the reasonable citizen to perceive that undue influence was likely to occur in such a conflicted process. This submission is supported by the outcomes of the process which are exactly what would be expected if the conflicts of interest of the agencies had influenced their deliberations.
- Despite repeated requests the government has refused to publish, consultant's reports, , cost benefit analysis and business case on the spurious grounds that the reports are in draft form are , "commercial in confidence" and were prepared for cabinet.
- The government is releasing information about possible development on the rail corridor at regular intervals and the Premier's refusal in Parliament to rule out development on the rail corridor is making it abundantly clear that the major objective has been to free up the railway land so that HDC can claim that it is "surplus rail land" eligible for sale by HDC to developers. The railway land is the only land in the Newcastle Inner City not undermined and can thus be developed for substantial buildings without the need for expensive grouting..
- The process to arrive at this outcome has been totally flawed and the outcome makes no sense in terms of economics, transport or urban renewal. The outcome can only be explained by the conflicts of interest impacting on the process and the objective of doing what is required to free up the railway corridor land for development

RECOMMENDATION FOR INQUIRY

- 1 To find and recommend that the decisions of the government to rezone the Mall land for high rise be set aside and the height limits under the previous LEP be reinstated
- 2 To find that the planning processes of the government were so flawed and there was such conflict of interest involved that the Inquiry recommends that government must set aside its decision to cut the rail at Wickham and run trams along Hunter and Scott streets.

Alan Squire

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